

Chapter DHS 85

NON-PROFIT CORPORATIONS AND UNINCORPORATED ASSOCIATIONS AS GUARDIANS

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Note: This chapter replaced ch. PW 65. Chapter HSS 85 was renumbered chapter HFS 85 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, February, 2000, No. 530. Chapter HFS 85 was renumbered chapter DHS 85 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635. Chapter DHS 85 as it existed on May 31, 2010, was repealed and a new chapter DHS 85 was created, Register May 2010 No. 653, effective June 1, 2010.

Subchapter I — General Provisions

DHS 85.01 Purpose and authority. This chapter is promulgated under the authority of ss. 54.15 (7), Stats., and 227.11 (2) (a), Stats., to establish the criteria by which the department determines whether a private nonprofit corporation organized under ch. 181, 187, or 188, Stats., or an unincorporated association is suitable to perform the duties of a guardian of the person, or of the estate, or both, of a proposed ward.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.02 Applicability. This rule applies to private non-profit corporations or unincorporated associations applying to the department for consideration of suitability to perform the duties of guardian of a person or of an estate, or both, of a proposed ward.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.03 Definitions. As used in this chapter:

(1) “Applicant” means a private nonprofit corporation or an unincorporated association that applies to the department for a finding of suitability to perform the duties of a corporate guardian.

(2) “Corporate guardian” or “guardian” means a private nonprofit corporation or an unincorporated association appointed by a court to serve as guardian of the person, or of the estate, or both, of an individual who is found by a court to be in need of a guardian.

(3) “Department” means the Wisconsin department of health services.

(4) “Guardian of the estate” has the meaning given under s. 54.01 (11), Stats.

(5) “Guardian of the person” has the meaning given under s. 54.01 (12), Stats.

(6) “Guardianship program” means a system that is established by a corporate guardian to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of its wards under ch. 54, Stats.

(7) “Guardianship program manager” means an employee designated by a corporate guardian, who is responsible for the management and day-to-day operation of the guardianship program.

(8) “Guardian representative” means an individual assigned by a guardian to perform the functions of the guardian of the per-

son under s. 54.25 (1) and (2), Stats., or of the estate under ss. 54.19 and 54.20, Stats., or both, of a ward.

(9) “Successor guardian” has the meaning given in s. 54.01 (35), Stats.

(10) “Unincorporated association” is an organization organized under ch. 184, Stats.

(11) “Ward” has the meaning given under s. 54.01 (37), Stats.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10; **reprinted to correct error Register June 2010 No. 654, eff. 7-1-10.**

DHS 85.04 Waivers and variances. (1) DEFINITIONS. In this section:

(a) “Variance” means the granting of an alternate requirement in place of a requirement of this chapter.

(b) “Waiver” means the granting of an exemption from a requirement of this chapter.

(2) **REQUIREMENTS FOR WAIVERS AND VARIANCES.** The department may grant a waiver or variance of a requirement of this chapter to the corporate guardian if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any ward and meet any of the following conditions:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the ward.

(b) An alternative to a requirement, including a new concept, method, procedure or technique, other equipment, other personnel qualifications, or the conducting of a pilot project, is in the interests of better care or management.

(3) **APPLYING FOR A WAIVER OR VARIANCE.** A corporate guardian may apply for a waiver or variance at any time. Each request shall be made in writing to the department and include all of the following:

(a) The rule provision from which the waiver or variance is requested.

(b) The time period for which the waiver or variance is requested.

(c) If the request is for a variance, the specific proposed alternative action.

(d) The reasons for the request.

(e) Justification that a requirement under sub. (2) would be satisfied.

(f) Any other information requested by the department.

(4) **DEPARTMENT DECISION.** (a) The department shall grant or deny each request for waiver or variance in writing. A notice of denial shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

(b) The terms of a requested variance may be modified upon agreement between the department and the corporate guardian.

(c) The department may impose conditions on the waiver or variance which it deems necessary.

(d) The department may limit the duration of a waiver or variance.

(5) HEARINGS. (a) Denial of a request for a waiver or variance may be contested by requesting a hearing as provided by ch. 227, Stats.

(b) The applicant shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(6) REVOCATION. The department may revoke a waiver or variance for any of the following reasons:

(a) The department determines that the waiver or variance is adversely affecting the health, safety or welfare of the wards.

(b) The guardian has failed to comply with the waiver or variance as granted.

(c) The guardian notifies the department in writing of the desire to relinquish the waiver or variance and be subject to the requirement previously waived or varied.

(d) Revocation is required by a change in law.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

Subchapter II — Approvals

DHS 85.05 Application. In this chapter: Only a private nonprofit corporation or an unincorporated association may apply to the department for a determination that the corporation or association is suitable to perform the duties of a guardian. A corporation or association applying for such a determination shall apply to the department on an application form provided by the department. The applicant shall submit the completed application and all of the following to the department:

(1) The filed endorsement of the Articles of Incorporation submitted to the Wisconsin department of financial institutions, if applicable.

(2) A copy of the applicant's written grievance procedure for use by wards and interested parties.

(3) A business plan that includes staffing projections.

(4) A statement agreeing in writing to submit such reports and answer such questions as the department shall require in monitoring a corporate guardian.

(5) Any additional information requested by the department.

Note: Copies of the application form can be obtained at <http://dfhs.wisconsin.gov/rIDSL/corptguardn> or by contacting the Division of Quality Assurance at P. O. Box 2969, Madison WI 53701-2969.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.06 Criteria for approval. The department may not approve an applicant until the department determines the applicant is fit and qualified to receive a determination of suitability to perform the duties of a corporate guardian. In determining whether an applicant is fit and qualified, the department may consider all of the following:

(1) Compliance history with Wisconsin's or any other state's licensing requirements and with any federal certification requirements, including any license revocation or denial.

(2) Arrest history and criminal record, including any of the following:

(a) Crimes or acts involving abuse, neglect or mistreatment of a person or misappropriation of property of the person.

(b) Crimes or acts related to the manufacture, distribution, prescription, use, or dispensing of a controlled substance.

(c) Fraud or substantial or repeated violations of applicable laws and rules in the operation of any health care facility or in the care of dependent persons.

(d) A conviction or pending criminal charge which substantially relates to the care of adults or minors, to the funds or property of adults or minors, or to the operation of a residential or health care facility or agency.

(3) Financial stability, including all of the following:

(a) Financial history and financial viability of the owner or related organization.

(b) Outstanding debts or amounts due to the department or other government agencies, including unpaid forfeitures and fines.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.07 Change of ownership. **(1)** If a corporate guardian sells or otherwise transfers ownership of the corporation or the association, the guardian shall notify each of its wards, the department, the court which ordered the guardianship, the county department designated under s. 55.02 (2), Stats., and all agencies or persons serving the ward in writing at least 30 days before the final transfer of ownership. This notice shall include the name and contact information of the new corporation.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.08 Corporate guardian closing. **(1)** If a guardian is a corporation and the corporation's corporate status is revoked by the department of financial institutions or is voluntarily or involuntarily dissolved, or if the guardian is an unincorporated association and the association's status is voluntarily or involuntarily dissolved by the members or a court, or becomes inactive, the guardian shall notify each of its wards, the department, the court which ordered the guardianship, the county department designated under s. 55.02 (2), Stats., and all agencies or persons serving the ward in writing at least 30 days before the corporation closes.

(2) The corporate guardian shall remain responsible for each ward until a successor guardian is appointed by the court.

(3) The corporate guardian shall transfer the original records of its wards to the successor guardian appointed by the court.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

Subchapter III — Personnel

DHS 85.09 Staff. **(1) GUARDIANSHIP PROGRAM MANAGER.** (a) The guardian shall designate an employee who is 21 years or older and is fit and qualified under s. 50.03 (4), Stats., to manage its guardianship program.

(b) The guardianship program manager shall have a high school diploma or its equivalent and have at least 3 years of relevant experience.

(c) The guardianship program manager shall be responsible for the ongoing training and competency of all employees.

(d) Any change of guardianship program manager shall be communicated to the department and the county department designated under s. 55.02 (2), Stats., within 14 days following the effective date of the change.

(2) OTHER EMPLOYEES. (a) Except as provided in sub. (1) (a) each employee shall have the skills, education and ability to fulfill the employee's job requirements.

(b) An employee that has direct contact with a ward shall be at least 18 years old.

(3) BACKGROUND CHECK. At the time of hire, employment or contract and every four years after, the corporate guardian shall conduct and document a caregiver background check on each employee following the procedures in s. 50.065, Stats., and ch. DHS 12. A guardian may not employ or contract with a person who has been convicted of the crimes or offenses, or has a govern-

mental finding of misconduct, found in s. 50.065, Stats., unless the person has been approved under the department's rehabilitation review process as defined in ch. DHS 12.

(4) EMPLOYEE RECORDS. A separate record for each employee shall be maintained, kept current, and include all of the following:

- (a) A written job description including duties, responsibilities and qualifications required for the employee.
- (b) Beginning date of employment.
- (c) Educational qualifications and relevant experience.
- (d) The results of the background checks required under sub. (3).
- (e) Documentation of training.

(5) VOLUNTEERS. The guardian may use volunteers if the volunteer receives the orientation and training necessary to assure the health, safety and welfare of wards.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.10 Training. (1) INITIAL TRAINING. Before performing the duties of a guardian, each guardian representative shall receive training that includes all of the following:

- (a) Job responsibilities.
- (b) Prevention and reporting of ward abuse, neglect and misappropriation of ward property.
- (c) Ward's rights and grievance procedures contained in chs. 54 and 55, Stats., s. DHS 85.13, and ch. DHS 94.
- (d) Information regarding the needs and services for each ward for whom the guardian representative is responsible.
- (e) Information about local resources available to meet the needs of wards.
- (f) Agency policies and procedures.

(2) CONTINUING EDUCATION. Each guardian representative shall complete 20 hours of training every 24 calendar months. The training shall be relevant to the guardian representative's job assignment and designed to increase the effectiveness of the employee to meet the needs of the wards served.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.11 Staffing. (1) The guardian shall at all times have an adequate number of staff who are qualified either by training or by experience to meet the needs of its wards, including knowledge of service needs and resources for meeting service needs.

(2) The guardian representative shall be accessible to the ward and to other persons concerned about the ward's well-being.

(3) The corporate guardian shall have staff available at all times to respond to an emergency situation as defined in s. DHS 94.02 (14).

(4) The corporate guardian shall have staff accessible to the local planning agency or interagency mechanism designated under s. 55.02, Stats.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.12 Conflict of interest. (1) The corporate guardian may not be subject to undue influence from any party.

(2) When the corporate guardian is a part of a larger organization, the corporate guardian shall have designated staff with independent decision-making authority about the guardianship program.

(3) Pursuant to s. 55.03 (1), Stats., a guardian may not be a provider of protective services or protective placement for its ward.

(4) No corporate guardian may accept a guardianship from a court in a county in which a member of the corporate guardian's board of directors or any employee or volunteer of the corporate guardian is a member or employee of the community board organized under s. 46.23, 51.42 or 51.437, Stats., or an employee of the county department of social services or human services or community programs or county board of supervisors or department of

aging or a county court commissioner who hears petitions for guardianship or a member of a medicaid managed care organization.

(5) A corporate guardian may not profit from their ward.

(6) The guardian may not commingle personal or corporate funds with the funds of the ward. The guardian may consolidate and maintain wards' funds in accounts with other wards' funds if the guardian keeps separate and complete accounting of each ward's funds.

(7) Pursuant to s. 54.18 (3) (b), Stats., the corporate guardian may not lend funds of the ward to another individual or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.

(8) The corporate guardian may not engage in any financial transaction involving the ward's estate except as permitted under ch. 54, Stats., and this chapter.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

Subchapter IV — Ward Services

DHS 85.13 Rights of wards. (1) WARDS' RIGHTS. Every ward shall have the right to all of the following in relation to the corporate guardian:

- (a) Be treated with respect and dignity by the staff and volunteers of the corporate guardian.
- (b) Be free from abuse, mistreatment, neglect and misappropriation of property.
- (c) Confidentiality of health and personal information and records, except to the extent the corporate guardian may be authorized under the guardianship order to give informed consent to disclosure.
- (d) Be informed of the services provided by the corporate guardian agency.
- (e) Be consulted about decisions on the ward's behalf, to the extent the ward is capable.
- (f) Have guardianship services provided in a way that is least restrictive as defined in s. 54.01 (18), Stats.
- (g) Communicate freely with the advocates of the ward's choice.
- (h) File a grievance or a complaint without retaliation.

(2) COMPLAINTS. Any person may file a complaint with a corporate guardian or the department regarding the operation of a corporate guardian. The department may investigate a corporate guardian as it deems necessary.

Note: A complaint may be filed by writing the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969 or by calling the department's toll-free complaint line at 1-800-642-6552 or by filing a complaint at <http://dhfs.wisconsin.gov/bqaconsumer/HealthCareComplaints.htm>.

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DHS 85.14 Duties. (1) The guardian representative shall meet with the ward within 14 days of the court appointment as corporate guardian. At the first meeting, the guardian representative shall complete all of the following:

- (a) Explain to the ward the role of the guardian.
- (b) Explain the guardianship determination and order including the rights addressed by the court. The guardian representative shall be familiar with the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained. The guardian representative shall explain to the ward the provisions of the court order as they relate to limitations on the rights of the ward and those rights which are retained.
- (c) Explain the applicable rights of the ward contained in ss. 54.18 (1), 54.25 (2), 54.42 and 55.10 (2), Stats., s. DHS 85.13 and the rules of the residence.
- (d) Explain how to file a grievance and how to obtain a written copy of the grievance procedures for the living arrangement or for a service provider and the guardianship program.

(e) Explain how to file a complaint with the department and provide the ward with the department's toll-free complaint telephone number and the address and telephone number of the department's division of quality assurance.

Note: A complaint may be filed by writing the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969 or by calling the department's toll-free complaint line at 1-800-642-6552 or by filing a complaint at <http://dhfs.wisconsin.gov/bqaconsumer/HealthCareComplaints.htm>.

(2) The guardian representative shall notify relevant agencies and individuals of the appointment guardianship and shall provide letters of guardianship to the ward's service providers and others, as necessary.

(3) If a medical evaluation was not completed within the past year, the guardian shall obtain an evaluation of the ward's condition, treatment, and functional status from the ward's treating physician, or appropriate treatment provider.

(4) The guardian representative shall fulfill the duties of a guardian of person pursuant to ss. 54.18 (2) and (3) and 54.25 (1), Stats. The guardian representative shall fulfill the powers assigned by the court and shall exercise only those powers granted to the guardian representative by the court pursuant to s. 54.25 (2), Stats. A guardian representative shall be aware of and, if applicable, advocate for the ward's rights under ss. 50.09 and 51.61, Stats., and shall advocate for the least possible restrictions on the ward's liberty and exercise of constitutional and statutory rights, pursuant to ss. 54.18 (2) and 54.25 (2) (d) 3., Stats.

(5) A guardian representative of the estate shall fulfill the duties of a guardian of the estate pursuant to ss. 54.18 (2) and (3), 54.19, and 54.20 (1), Stats. A guardian representative shall fulfill the powers assigned by the court pursuant to s. 54.20, Stats., and shall seek court approval for those powers requiring court approval pursuant to s. 54.20 (2), Stats. In seeking compensation or reimbursement from the ward's funds, a guardian representative shall ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(6) A corporate guardian shall obtain court approval prior to receiving any compensation or reimbursement from the wards funds, pursuant to s. 54.72, Stats. In seeking compensation or reimbursement from the ward's funds, a corporate guardian must ensure that any payments sought or received will not prevent the corporate guardian from providing adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(7) For a guardian of person, the guardian representative shall have face-to-face contact with the ward at least once every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and provided with the opportunity to exercise legal rights. The guardian representative shall visit the ward in their residence at least annually.

(8) For guardian of estate, the guardian representative shall have personal contact every 3 months and more often as needed to meet the needs of the ward. The guardian representative shall take necessary action to see that the ward receives needed services, and to assure that the ward is well treated, properly cared for, and provided with the opportunity to exercise legal rights. The guardian representative shall have face-to-face contact with the ward at least annually.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.15 Records. (1) The corporate guardian shall maintain a separate file for each ward including all of the following information and documents as applicable:

(a) Name, date of birth, address, telephone number, and social security number. Guardians of person shall also maintain information regarding the ward's medical coverage, physician, diagnoses, medications, and allergies to medications.

(b) A current photograph of the ward.

(c) All relevant legal documents involving the ward.

(d) Advance directives.

(e) A list of key contacts.

(f) A list of service providers, contact information, a description of services provided to the ward and progress reports as applicable.

(g) Documentation of all ward and collateral contacts, including the date, time, and activity.

(h) Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward.

(i) A guardianship inventory, accounts and annual reports as required by statute, including all supporting financial statements, records and financial reports.

(j) Assessments regarding the ward's past and present medical, psychological, and social functioning, including relevant family medical information.

(k) Documentation of the ward's known values, preferences, and wishes regarding medical and other care and services including all advanced directives made prior to guardianship, and financial matters and other services.

(L) A personal and social history of the ward including a family history.

(2) If guardianship is transferred, the corporate guardian shall transfer the original record required in this section to the successor guardian.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

Subchapter V — Withdrawal of Approval

DHS 85.16 Actions affecting approval. (1) If at any time the department determines that a corporate guardian no longer meets the criteria under this chapter, the department may withdraw its approval upon 30 day written notice to all of the following:

(a) Corporate guardian.

(b) All courts that assigned the corporate guardian's guardianships.

(c) The ward.

(d) The ward's family.

(e) Any other interested parties.

(f) The county department designated under s. 55.02, Stats.

(2) The corporate guardian shall comply with the provisions in s. DHS 85.08 (2) regarding a corporate guardian closing.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.

DHS 85.17 Appeal of decisions. Any party adversely affected by a decision of the department about the suitability of a private non-profit corporation or an unincorporated association for corporate guardianship may appeal that decision to the department of administration's division of hearings and appeals under ss. 227.42 and 227.44 to 227.50, Stats. The request for a hearing shall be filed with the department of administration's division of hearings and appeals within 10 working days after receipt of the notice of denial. The request for hearing is considered filed when the request is received by that division.

Note: To appeal a decision by the department, send a request for a hearing to Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707.

History: CR 09-061: cr. Register May 2010 No. 653, eff. 6-1-10.